

STATE OF TENNESSEE  
OFFICE OF THE  
ATTORNEY GENERAL  
450 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37243-0485

February 25, 1991

OPINION NO. U91-31

Payment of Compensation to Emergency Communications District  
Board Members for Services Performed at the Direction of the  
Board

---

QUESTIONS

(1) May the Board of Directors of an Emergency Communications District ("ECD") pay a member of the Board for bookkeeping and accounting services rendered on the ECD's behalf?

(2) May the Board of Directors for an ECD pay a member of the Board for supervising the answering and dispatching functions for the ECD?

OPINIONS

(1) It is the opinion of this office that an agreement to pay a Board member for professional services rendered the Board is, in substance, the award and supervision of a public contract for those services by one with a direct interest in that contract. As such, it is an unlawful conflict of interest, and it is not cured by the abstention of the beneficiary in the vote approving the agreement.

(2) It is the opinion of this office that the arrangement proposed is unlawful for the same reasons as in question (1).

### ANALYSIS

An Emergency Communications District (ECD) may be established under the provisions of T.C.A. §§ 7-86-101 et seq. The creation of a Board of Directors for and ECD, and the powers of such a Board, are discussed in T.C.A. § 7-86-105. Subsection (d) states: "The members [of the Board] shall serve without compensation." Also relevant to this inquiry is subsection (g), which states: "The Board shall have authority to employ such employees, experts, and consultants as it may deem necessary to assist the Board in the discharge of its responsibilities to the extent that funds are available."

The arrangement proposed by the question amounts to the award of a contract to the affected board member for the performance of bookkeeping and accounting services. The request for this opinion also raises the question whether the affected member's abstention from voting on the award is sufficient to cure the conflict of interest.

T.C.A. § 12-4-101(2) provides that "Any member of a local governing body of a county or municipality who is also an employee of such county or municipality and whose employment began on or after [his service on the governing body began] shall not vote on matters in which he has a conflict of interest." However, this subsection does not apply to the proposed ECD arrangement, since an ECD board is not a "governing body of a county or municipality."

Because the interest of the ECD board member in the proposed arrangement is direct within the meaning of subsection (a)(1) ("Directly interested" means any contract with the officer himself . . ."), the matter seems to come within the general prohibition of such transactions in the same subsection:

It shall not be lawful for any officer, committeeman, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development districts, utility district, human resource agencies, and other political subdivisions created by such a statute shall or may be interested, to be directly interested in any such contract.

The statute, by its terms, does not provide any exception for directly interested officials who attempt to cure the problem by abstaining from the vote on the award. This

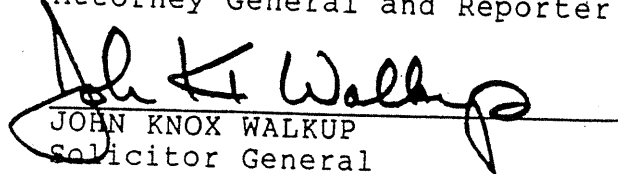
omission is the more significant, since subsection (b) does provide for a procedure whereby an official with an indirect interest may vote on a matter affecting that interest, provided he openly acknowledges that interest. Thus, it would seem that the arrangement proposed is forbidden by the conflict-of-interest statute.

Obviously, the same considerations would make it improper for an ECD Board member to serve, with pay, as a supervisor of the answering and dispatch operations of the district.



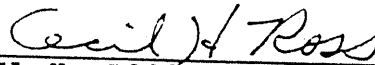
CHARLES W. BURSON

Attorney General and Reporter



JOHN KNOX WALKUP

Solicitor General



CECIL H. ROSS

Assistant Attorney General

Requested by:  
The Hon. Ward Crutchfield  
State Senator  
615 Lindsay Street  
Chattanooga, Tenn. 37402